

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)

Implementation of Sections 309(j) and)
337 of the Communications Act of 1934)
as Amended)

Promotion of Spectrum Efficient)
Technologies on Certain Part 90)
Frequencies)

Establishment of Public Service Radio)
Pool in the Private Mobile)
Frequencies Below 800 MHz)

WT Docket No. 99-87

RM-9332

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY


To: The Commission

REPLIES OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Reply Comments in the above-entitled proceeding.¹ The volume of Comments filed in response to the Notice highlights the significance of the issues under consideration to the Part 90 user community. The Commission's proposals regarding implementation of its new statutory authority to use competitive bidding procedures to select among mutually exclusive applicants for heretofore exempted Private Land Mobile Radio ("PLMR") Service spectrum raise fundamental issues in respect to the composition of and appropriate regulatory scheme for those services.

Although both the sheer number of and the variety of positions advanced in the Comments indicate there are matters on which it may be difficult to reach even a consensus, much less a unanimous, position, there also are key issues on which the industry is united. The Association is optimistic that there is sufficient commonality of viewpoint for the Commission to begin to erect a comprehensive regulatory framework for these vital services.

I. DISCUSSION

1. Most Commenters in this proceeding share certain core beliefs. They support a determination that the PLMR services are essential to the efficient management of the nation's business; that they must have additional capacity if they are to serve these life and property-critical needs; that the users on these services are entitled to an acceptable quality of service with access to improved technologies; and that users should be able to choose from among a variety of options

¹*Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd (rel. Mar. 25, 1999) Reply Comment Date extended by Public Notice, *Order*, WT Docket No. 99-87 (rel. Sept. 10, 1999) ("Notice" or "NPR").

to accommodate their spectrum needs. Additionally, many Commenters oppose subjecting PLMR licensees to acquiring spectrum through auctions; argue that the mutual exclusivity on which the FCC's auction authority is predicated need never arise in the PLMR services; and assert, in any event, that essentially all PLMR usage qualifies under the Congressional definition of public safety services still exempt from auctions.

2. AMTA agrees that there is an increasingly critical shortage of capacity for Part 90 eligibles. It concurs that the services performed by these users are fundamental to the American economy and should not be relegated to a technological backwater because of capacity limitations. It supports a regulatory environment in which entities are permitted to select the communications option that best satisfies their specific requirements.

3. However, as noted in its Comments and contrary to a number of participants in this proceeding, AMTA is not persuaded that retention of the current regulatory structure for existing Part 90 spectrum and application of these same regulatory parameters to new spectrum, if any, can reasonably be expected to address the capacity requirements of this industry or the Congressional directives to which the FCC's rules must conform. AMTA recently submitted a Petition for Rule Making proposing a revolutionary revamping of the non-Public Safety Part 90 spectrum in the 450-470 MHz band.² The Association has recommended the revitalization of that band through the introduction of advanced, more spectrally efficient technologies implemented by private internal licensees or commercial service providers with access to sufficient

²*Public Notice*, AMTA Request for Relicensing of Certain Frequencies to Require Spectrally Efficient Use, RM-9705 (rel. Aug. 24, 1999) ("Petition").

exclusive channels. To the extent the issues addressed in the Comments in this proceeding and those raised in AMTA's Petition are inter-related, the Association is pleased to have this opportunity to respond to them.

A. Composition of the PLMR Services

1) Public Safety Auction Exemption

4. The basic issue presented in the instant proceeding is how to define for FCC regulatory purposes the Congressional term "public safety" in the context of exempting eligibles in that category from competitive bidding procedures. Fear of **not** being classified as auction-exempt permeates the Comments in this proceeding. Virtually all parties have claimed for themselves or their constituents operating responsibilities that arguably satisfy the legislative standard of services "used to protect the safety of life, health and property."³ Businesses ranging from airports to grocery stores all have asserted that aspects of their operations involve the types of safety issues Congress intended to exempt from competitive bidding.⁴ AMTA agrees it may be difficult to identify a PLMR user with **no** claim to safety-related activities, including PLMR eligibles served on Part 90 commercial systems. Should all those arguments be persuasive, the statutory exemption would be rendered effectively meaningless.

5. In its Comments, the Association declined to take a position on which entities should qualify for the public safety auction exemption. It noted only that the decision on that key issue would necessarily impact the allocation of spectrum between auction-exempt and non-exempt

³47 U.S.C. § 309(j)(2).

⁴*See, e.g.,* Comments of the Land Mobile Communications Council ("LMCC"), the Boeing Company, and the Personal Communications Industry Association ("PCIA").

services. However, after reviewing the Comments in this proceeding, AMTA suggests there may be an alternative approach to addressing this complex issue.

6. Those arguing against the use of auctions to award PLMR licenses support the current system of site-specific licensing with frequency recommendations made by frequency advisory committees.⁵ They state that geographic licensing is inferior to site-specific licensing in meeting their defined operating requirements. They claim the current system avoids mutual exclusivity through judicious channel assignments and technical analyses, and correctly note that without mutual exclusivity there is no basis for competitive bidding.

7. AMTA agrees that auctions are neither appropriate nor statutorily permitted when mutual exclusivity is avoided entirely by unlimited spectrum sharing. If there is no channel exclusivity to begin with, mutual exclusivity is an impossibility. Without channel exclusivity, all potential users can be accommodated because the coordinators are obligated to identify only the "best available" frequency, not a frequency meeting any defined standard of utility or technical quality. The interests of current and future users are protected equally: no prospective applicant can be turned away for lack of available spectrum and no existing licensee can object to increased sharing.

8. To the extent parties assert that the current shared-frequency, site-specific licensing approach satisfies their requirements, even those that might have been expected to demand channel exclusivity, the Commission should consider retaining that system for those claiming public safety

⁵The fact that the great majority of substantive Comments advancing that position were filed by frequency advisory committees with a direct economic interest in maintaining this licensing system does not, in and of itself, invalidate the position.

status and should set aside spectrum from existing and future allocations for that purpose. Similarly, parties willing to acquire spectrum through competitive bidding should be awarded geographic-based, exclusive channel assignments from a separate pool of spectrum.

9. In effect, each applicant's operational requirements would dictate under which licensing structure it wished to operate, and that decision would not be fixed. An entity might find that some of its needs were well served on truly shared frequencies assigned through the coordination process, but that it wanted channel exclusivity in a defined geographic area for other purposes.⁶ The Congressional objective that no safety-related communications need be denied because of an inability to acquire spectrum through an auction would be assured, both for today's and tomorrow's users, through a frequency sharing coordination process that those users themselves have endorsed.

10. This approach has the corollary benefit of providing a genuine opportunity for the implementation of more technically efficient equipment on those Part 90 channels awarded exclusively on a geographic basis. As described in its Petition, the Association does not believe the existing licensing structure has the potential for meaningful efficiency improvements, even with the recent refarming decisions that provide for a form of site-specific channel exclusivity.⁷ AMTA remains hopeful that the Commission will make additional, clear spectrum available for the PLMR

⁶AMTA specified in its Petition what it believes to be the optimal mix of shared and exclusive channels in the 450-470 MHz band.

⁷Several Commenters in this proceeding agree that shared and exclusive channel assignments should not be inter-mingled on an overlay or any other basis. *See, e.g.,* Comments of Blooston, Mordkofsky, Jackson & Dickens on behalf certain private internal radio clients ("Private Radio Licensees") at p. 10.

services in the near future. However, in light of the many competing demands for that scarce resource, the Association urges the Commission and the industry to adopt AMTA's plan for better utilization of already allocated spectrum as detailed in its Petition.

2) Part 90 Carriers

11. The Comments in this proceeding are essentially unanimous in their support for retention of the private carrier, multiple licensed and cooperative licensing options.⁸ Like AMTA, a number of parties emphasized that these systems traditionally have conserved spectrum resources and provided important public interest benefits by serving Part 90 eligibles without the resources or the fleet size to warrant their own internal systems. Contrary to the concerns expressed in the Notice, industry participants had no difficulty distinguishing such entities from "commercial systems":

Private carriers and community repeaters are easily distinguished from commercial carriers via the product used, the scope of the services offered, the geographic area of service, spectrum capacity and availability, regulatory oversight mechanisms, and customer bases.⁹

The product used by private carriers and the scope of the services offered are distinct from commercial providers. Private carriers offer dispatch-type communications only for private internal users, while commercial providers offer cellular, PCS, paging and dispatch-plus services to the public at large.¹⁰

⁸See, e.g., Comments of PCIA, Motorola, Inc., Private Internal Radio Service Coalition ("PIRSC"), USMSS, Inc. and Joint Comments of the Industrial Telecommunications Association, Inc., the Council of Independent Communications Suppliers, the Taxicab & Livery Communications Council and the Telephone Maintenance Frequency Advisory Committee ("Joint Commenters").

⁹Joint Commenters at ¶ 26.

¹⁰USMSS at ¶ 18.

12. In fact, the Comments on this subject are strikingly similar to the comments AMTA has filed in various Commission proceedings in which the Association has urged the FCC to distinguish between telecommunications carriers actually providing service "to the public" and those serving a non-consumer, business-oriented customer base of PLMR users limited by the capacity and geographic coverage of their systems. AMTA agrees that the vast majority of Part 90 third party service providers should not be considered as providing service "to the public" in the statutory sense.¹¹ The Comments in this proceeding confirm that PLMR users and manufacturers consider these licensing alternatives valuable options for many Part 90 eligibles and that they should be retained.¹²

B. Need For Part 90 Efficiency Improvements

13. Among other matters, the Notice requested comments on a Petition for Rule Making filed by AMTA more than a year ago in which the Association urged the Commission to adopt specific dates after which the authorizations of Part 90 licensees in identified geographic areas

¹¹This term was used by Congress in its definition of Commercial Mobile Radio Services ("CMRS"). *See*, 47 U.S.C. § 332(d)(1). AMTA and the Commission have been successful in formulating a "covered carrier" definition that has provided a clear, useful distinction between different types of Commercial Mobile Radio Service ("CMRS") providers for purposes of several regulatory obligations. AMTA believes a similar delineation could and should be made between CMRS operators providing service to the public and those serving only PLMR eligibles, and volunteers to work with the FCC to craft such a definition.

¹²Under AMTA's proposal, some such providers might continue to be satisfied with the shared spectrum on which they currently operate, in which case they would not be required to participate in competitive bidding procedures. Those opting for channel exclusivity within a defined geographic area would participate in the auction process unless, of course, the Commission becomes statutorily empowered to use another selection method.

would be superseded to reflect secondary status unless they deployed more efficient equipment.¹³ While the comments on that AMTA Petition raised certain implementation issues, those who commented were consistent in their support for the concept of a date certain by which the FCC should mandate conversion to narrowband or other more technically efficient equipment.¹⁴ In fact, the LMCC reminded the Commission the Council had urged adoption of affirmative procedures for narrowband conversion four years ago.¹⁵ It is apparent that, whatever other decisions are reached in this proceeding, the FCC, at a minimum, should heed the pleas of the PLMR industry for regulatory assistance in achieving the shared goal of improved spectrum efficiency in the Part 90 bands.

C. Band Manager Concept

14. In the Notice, the Commission requested comment on its newly-formulated Band Manager concept, described as an entity that would acquire a license through competitive bidding and be required to use the spectrum purchased to serve PLMR requirements. The NPR left open a number of issues regarding how such entities would be selected, the scope of the rights they would acquire, and the obligations they would assume.

¹³AMTA *Petition for Rulemaking*, RM-9332 (filed June 19, 1999); *Public Notice*, Report No. 2288 (rel. July 31, 1998). AMTA has since determined that its original approach was not sufficient to ensure the necessary levels of spectrum efficiency. Its more recent Petition reflects the Association's current position on this subject.

¹⁴*See, e.g.*, Comments of the American Petroleum Institute ("API"), the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), PCIA and the LMCC.

¹⁵Comments of LMCC at ¶ 20.

15. AMTA suggested in its Comments that the Band Manager was analogous to existing private carriers and SMR providers who already are subject to spectrum auctions and who, by election, serve the needs of the PLMR community. Interestingly, and not unlike the blind men feeling the elephant, the positions taken on the Band Manager concept were widely varied, but invariably related directly to the Commenter's role within the industry. AMTA analogized it to the SMR operator. Certain frequency advisory committees believed it resembled them in their roles as coordinators.¹⁶ Some participants expressed concern that, like the auction itself, a Band Manager would constitute yet another economic barrier to their spectrum acquisition efforts.¹⁷

16. Because there was no consensus on what the Band Manager was, or should be, the record is not adequate to support a decision on this licensing concept. As is typical, the devil is in the details, of which there currently are few. To the extent the Commission intends to pursue consideration of this approach, the Association and presumably other members of the PLMR community would be pleased to work with the agency to refine the concept for further, more focused consideration.

II. CONCLUSION

17. For the reasons described above, AMTA urges the Commission to proceed promptly to act in a manner consistent with the positions expressed herein.

¹⁶Comments of PCIA and Joint Commenters,

¹⁷Comments of PIRSC, Small Business in Telecommunications ("SBT") and Merrill T. See.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this September 30, 1999 caused to be mailed, first-class, postage prepaid a copy of the foregoing Replies to the following:

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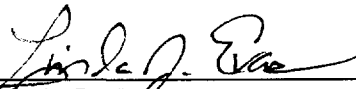
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